former, the question of most importance, according to some authorities, is whether the bank can charge back the amount of the draft to the depositor's account, in case, for any reason, it cannot be collected.[6] This is disputed in Maryland[7] and Kansas,[8] where it is said that the right of the bank to charge back is really only a recognition of its rights as indorsee, "and hence is not in any sense inconsistent with ownership." As regards "time" paper, the controlling element seems to be the nature of the entry on the books of the bank. If the full amount of the draft is credited to the depositor, it is held that a sale of the paper has not taken place,[9] but if the proceeds only are credited; *i. e.*, the amount of the draft, less the discount, title has passed to the bank.[10] The mere fact that the depositor may draw on the bank immediately after the deposit of the draft is generally considered not to indicate a transfer of ownership.[11] There seems to be a divergent opinion, however, as to whether the fact that the credit is given as cash has the effect of passing title,[12] there being no element of greater weight—such as an agreement of the parties—to determine the question.

It will thus be seen that the law on this subject is not uniform, although, as has already been said, some of the supposed conflict of authority is due to the fact that in many apparently irreconcilable cases there are seemingly unimportant elements which serve to distinguish and reconcile them. The only general statement which can safely be made as to the whole question is that it is one of fact, depending on the circumstances which exist in each case.

L. C. A.

CARRIERS—DEPOT REGULATIONS—EXCLUSIVE LICENSE TO TUG BOAT COMPANY.—The question of the obligation of a common carrier to afford equal privileges in and about its depots, to persons, not themselves passengers, shippers or consignees, who seek the business of removing the persons or goods carried from the depot, was raised in an interesting way in the recent case of Baker-Whiteley Coal Co. v. B. & O. R. R. Co.[1] The defendant railroad

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[6] Armour Packing Co. v. Davis, 118 N. C. 548 (1896); Zane on Banks and Banking, sec. 133.

[7] Ditch v. Bank, *supra.*

[8] Noble v. Doughten, 72 Kan. 336 (1905). *Accord:* Trust and Savings Bank v. Mfg. Co., 150 Ill. 336 (1894).

[9] Giles v. Perkins, 9 East, 12 (1807).

[10] Carstairs, *et al.*, v. Bates, 3 Campbell, 301 (1812).

[11] Balbach v. Frelinghuysen, 15 Fed. Rep. 675 (1883). 2 Morse on Banks and Banking, Fourth Edition, sec. 583c.

[12] Kavanaugh v. Bank, 59 Mo. App. 540 (1894), and Amer. Ex. Nat'l Bank of Chicago v. Gregg, 37 Ill. App. 425 (1890), hold that in such a case title has passed. *Contra:* Beal v. City of Somerville, *supra.*

[1] 188 Fed. 405 (1911).

company had established a pier in Curtis Bay, near Baltimore, which was held out and used as an ordinary railway freight station for shipments of coal. It contracted to give the exclusive right of docking vessels at the pier to a tug-boat company, a business rival of the complainant. The complainant had a contract with the owners of the steamship "Horda" to tow her to the pier where she was to load with coal. On attempting to perform the contract the complainant's hawsers were cast off and it was prevented from docking the vessel. The complainant brought a bill praying that the defendant be restrained from enforcing the regulation made necessary by its contract. The Court conceded that the tracks and station of a railroad company continue to be private property although devoted to public use and that they were subject to reasonable regulation by the railroad, but held that the contract in question was void as an attempt, under guise of regulations for the use of the wharf, to limit the right to approach it over the navigable waters of the United States, to a single person.

There is a very interesting line of cases raising this and kindred questions, and it is submitted that an examination of them, while it leads to the conclusion that the decision in the principal case is correct, discloses a slightly different ground on which a more logical *ratio decidendi* of the case might have been pronounced. These cases seem to fall into three general classes.

The first class of case deals with the carrier's right to regulate the use of that part of its private property which is the real essential of its equipment as carrier and over which its statutory monopoly extends, that is, its rails. Here its right is absolute so long as it gives the public uniform and efficient service. "If this is done the railroad owes no duty to the public as to the particular agencies it shall select for that purpose. The public require carriage but the company may choose its own appropriate means of carriage, always provided they are such as secure reasonable promptness and security." [2] So also a carrier owes no duty to handle impartially the sleeping cars of every car company which wishes to serve the public on its trains.[3] Within the limits of its statutory monopoly, a carrier

[2] Express Cases, 117 U. S. 1 (1885). In these cases certain express companies sought to restrain certain railroads from discriminating against them in the matter of the accommodation afforded express companies in general. The bills were dismissed. The result of the case is tersely summed up by Baker, J., in his opinion in Donovan v. Pennsylvania Co., 120 Fed. 215 (1903): "The railroad company is a common carrier of merchandise, but not a common carrier of common carriers of merchandise."

[3] Pullman Cases, 139 U. S. 24 (1890). See the words of Mr. Justice Harlan, at page 89: "Its duty, as carrier of passengers was to make suitable provision for their comfort and safety. Instead of furnishing its own dining room and sleeping cars as it might have done, it employed the plaintiff whose special business it was to provide cars of that character, to supply as many as were necessary to meet the requirements of travel * * * it was a matter of indifference to the public who owned them." See also Barney v. Steam-

can exclude all others who wish to serve its passengers, or give exclusive licenses for such service. It owes no duty of uniform service to such persons.

The second class of case is where the railroad attempts to regulate the use of the public highway adjacent to its stations. It is universally agreed that this cannot be done. "But the right of the railroad company, as abutting owner, and the rights of passengers are not in their nature paramount to the rights of others of the general public, to use the side walk in question, in legitimate ways and for legitimate purposes. Licensed hackmen and cabmen, unless prohibited by valid local regulations, may, within reasonable limits, use a public sidewalk in prosecuting their calling, provided such use is not materially obstructional in its nature."[4] The freedom of those soliciting business from passengers, to use the public highway without regulation by the carrier, was upheld by the Minnesota Supreme Court in Godbout v. Depot Co.[5]

The third class of case presents facts falling between those of the two classes already discussed. The question raised is the right of the carrier to regulate the solicitation of business from passengers by hackmen on the platforms, or within the depot or adjacent private property, of the carrier. All cases agree that the carrier may make reasonable regulations which do not discriminate between parties soliciting such business.[6] As to granting exclusive licenses to hackmen and the like to solicit within the depot, the cases have been in conflict;[7] but the more recent decisions seem to recognize this right in the railroads.[8] It is universally admitted, however, that an exclusive license which is held valid, does not prohibit a private conveyance from entering the depot or grounds to receive the owner

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boat Co., 67 N. Y. 301 (1876); Kates v. Atlanta Baggage Co., 107 Ga. 636 (1899).

[4] Donovan v. Pennsylvania Co., 199 U. S. 279 (1905). The Circuit Court had enjoined the hackmen in this case "from congregating on the sidewalk, in front of, adjacent to, or about, the entrances and there soliciting the custom of passengers." "This injunction," said the Court of Appeals, "was too broad; the congregating that may be restrained in this suit is only such as interferes with the ingress and egress of passengers and employees." This seems to recognize that the only right a railroad has in the abutting highway is the easement common to all owners of abutting property.

[5] 47 L. R. A. 532 (1900).

[6] Cole v. Rowen (Mich., 1891), 13 L. R. A. 848. A regulation assigning a special place to each cabman was upheld. See also: Hutchinson on Carriers' Second Edition, Section 522; I Fetter on Carriers, Section 245.

[7] Donovan v. Pennsylvania Co., 61 L. R. A. 140, and note; Cole v. Rowen, 13 L. R. A. 848 (Mich., 1891) and note; Godbout v. Depot Co. (Minn., 1900); 47 L. R. A. 532, and note; Hutchinson on Carriers, Second Edition, Sections 522, 523; I Fetter on Carriers, Section 245

[8] Donovan v. Pennsylvania Co., 199 U. S. 279 (1905); Oregon Short Line v. Davidson, 33 Utah 370 (1908); Note to last case in 10 L. R. A. (N. S.) 777; Railroad v. Brown, 177 Mass. 65 (1900), affirming Old Colony R. R. v. Toupp, 147 Mass. 35 (1888).

or his goods; and for this purpose a public vehicle previously hired, is considered a private vehicle.[9]

The Court reached its decision in the principal case on the theory that it was dealing with a case of the second class: that the railroad by the regulation in question, sought to restrict the use of adjacent navigable waters of the United States by independent tug-boat owners. The Court assumed that a tug-boat in docking a vessel makes no use of the pier proper, but only of the surrounding waters. "He (complainant) does not ask to be allowed to go upon the pier or other property of the defendant, or make any use of it for the purpose of soliciting business or otherwise, as claimed by the hackmen." It is submitted that this is too nice a distinction in fact, and that the decision could have been reached more rationally by considering the case as one under the exception to the third class of case discussed in relation to private conveyances. The facts showed that the coal was delivered at the pier "to whatever vessel or vessels the shippers or consignee of the same may designate." The steamer "Horda" was the private vessel of the consignee; and in bringing her to the pier, the services of a tug-boat were no less necessary than are those of a driver to a vehicle on land. It is also true that the complainant's contract to dock the steamer was made previous to the docking; and the case was not one of a tug soliciting business at the pier, but of the right to the use of the pier by a tug already in contract with the person whose legal right it was to receive the coal.

F. L. B.

CONSTITUTIONAL LAW—VIOLATION OF THE THIRTEENTH AMENDMENT.—In a recent case in Georgia[1] the question before the court was the constitutionality of those sections of the Penal Code making it a misdemeanor to contract to perform services with intent not to perform them;[2] and making satisfactory proof of the contract and the failure to perform, *prima facie* evidence of an intent to defraud.[3] The court held the first provision constitutional, and refused to discuss the second as it was not before them under the facts of the case. The argument of the court was that it was not the breach of contract that was made a crime, but the intent to defraud, and the actual defrauding of another by virtue of such intent. There is no reason why fraudulent practices should not be made crimes, and if in the course of their punishment, the

[9] Griswold v. Webb, 19 Atl. Rep. 143 (R. I., 1889); Summitt v. State, 8 Lea 413 (Tenn., 1881); I Fetter on Carriers, Section 245; Masterson v. Short, 33 How. Pr. 481 (N. Y., 1867).

[1] Latson v. Wells, 71 S. E. 1052 (Ga., 1911).

[2] Ga. Penal Code, 1910, Sec. 715.

[3] Ga. Penal Code, 1910, Sec. 716.